BRUNEI REPORTS

EMRAN BIN HJ. MD. NOOR v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 1 June 1988]

[Bandar Seri Begawan – Criminal Appeal No. 11 of 1986]

Criminal Procedure – Leave to appeal against conviction out of time – Application for – Notice of application for leave to appeal against sentence contained grounds of appeal against conviction – Whether this notice can form notice to appeal against conviction – Sarawak, North Borneo and Brunei Court of Appeal Rules, Form 6 – Sarawak, North Borneo and Brunei (Courts) Order in Council 1951.

The appellant was convicted of culpable homicide not amounting to murder and sentenced to life imprisonment. He filed a notice of appeal on a form prescribed for notice of application for leave to appeal against sentence. However, in a marginal note on the form, the appellant was also asked to state as clearly as possible the grounds on which he desires "to appeal against (his) conviction". The appellant now applies to the Court of Appeal for leave to appeal against conviction out of time.

Held, allowing the application: The notice of application for leave to appeal against sentence, read in its proper context, contains grounds of appeal against conviction as well as sentence. It could therefore be argued that the grounds of appeal against conviction were lodged within time.

COURT OF APPEAL.

Joseph Linus for the appellant.

Ivan Leong (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yang P. (delivering the ruling of the court): This is the appellant's application for leave to appeal against conviction out of time.

On 19 August 1986, he was convicted of culpable homicide not amounting to murder and sentenced to imprisonment for life. On 30 August 1986, he filed a notice of appeal on a form prescribed for notice of application for leave to appeal against sentence: Form 6 of the Sarawak, North Borneo and Brunei Court of Appeal Rules made under section 22 of the Sarawak, North Borneo and Brunei (Courts) Order in Council 1951. Curiously though, in a marginal note, the appellant is advised to fill in all the particulars and to state as clearly as possible grounds on which he desires "to appeal against your conviction". Be that as it may, the notice of 30 August 1986, read in its proper context, contains grounds of appeal against conviction as well as sentence. It could therefore be argued that the grounds of appeal against conviction were lodged within time.

The appellant has thus made a technical error here. In the circumstances, we are disposed to grant him the extension asked for.

Having heard counsel, we made the following order. Application granted for leave to appeal against conviction out of time on terms that proper grounds of appeal limited to the matters disclosed in the appellant's notice of appeal against sentence filed on 30 August 1986 (*vide* P.5–P.8 of the records of appeal) be lodged within four weeks. The hearing of the appeal to commence *de novo* at the next session. The matter of sentence is adjourned to the next session to be heard with, but subsequent to, the hearing of the appeal against conviction.

Order accordingly.

EVANGELINA E. SANTOS & ORS. v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 1 June 1988]

[Bandar Seri Begawan – Criminal Appeal No. 12 of 1987]

Criminal Procedure – Sentencing – Objections to facts stated by trial court – Benefit of doubt given to appellant – Deterioration in appellant's eye condition a medical matter – Not a matter for court to decide on an appeal against sentence – Penal Code, s. 489B.

The appellants pleaded guilty to a number of fraud offences under section 489B of the Penal Code. Their imprisonment sentences were as follows: the first appellant – three years, the second and third appellants – two years each. The appellants appealed against the sentences complaining that they were excessive.

Held, dismissing the second and third appellants' appeal and allowing the first appellant's appeal: (1) since the maximum sentence for an offence against section 489B of the Penal Code has been fixed at 15 years, it appears that those responsible for the Penal Code must have taken a very serious view of these offences which the court must reflect in sentencing;

(2) as there may be some substance in the first appellant's objections to the facts as stated by the trial court in sentencing them, the court will give the first appellant the benefit of the doubt. The first appellant's sentence is reduced to the same as that imposed on the other appellants, namely, two years;